

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LAL BHATIA,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

No. C 07-05583 CW
CR 04-40071 CW

ORDER DENYING MOTIONS TO
ISSUE AN INDICATIVE
RULING, TO AMEND OR
SUPPLEMENT § 2255
MOTION, TO ACCORD FULL
FAITH AND CREDIT TO
STATE JUDGMENT, TO
DISMISS INDICTMENT, FOR
DISCLOSURE OF BRADY
MATERIAL, AND TO REVERSE
THE CONVICTION AND
DISMISS FOR LACK OF
JURISDICTION

Docket Nos. 381, 387,
391, 392, 393, and 395

Movant Lal Bhatia files motions to (1) issue an indicative ruling in light of new developments; (2) amend or supplement his § 2255 motion (3) accord full faith and credit to a state civil judgment; (4) dismiss his indictment for Brady/Gigliolo/Kyles/Naupe violations; (5) order the prosecutor to disclose Brady materials; and (6) reverse his conviction and dismiss the charges for lack of jurisdiction.

Movant's conviction in this Court was upheld on appeal. See May 13, 2008 Ninth Circuit Court of Appeals Mandate (Docket 308).

1 On July 1, 2008, Movant filed a motion to vacate, set aside or
2 correct his sentence under 28 U.S.C. § 2255. (Docket No. 311). On
3 March 10, 2009, the Court denied the motion. (Docket No. 353). On
4 April 1, 2009, Movant appealed the denial of his § 2255 motion to
5 the Ninth Circuit. (Docket No. 357). While the appeal was
6 pending, Movant filed motions in this Court in an attempt to
7 relitigate the issues adjudicated in his § 2255 motion. See Docket
8 No. 364, Motion for Writ of Audita Querela; Docket Nos. 365, 367,
9 Motions for Expedited Consideration; Docket No. 368, Motion for
10 Sanctions and to Restore Movant's Rights and Privileges Status Quo
11 Ante. The Court denied all of these motions. On January 31, 2011,
12 the Ninth Circuit affirmed the Court's denial of the § 2255 motion
13 (docket no. 386); the mandate issued on March 25, 2011 (docket no.
14 388).

15 On August 18, 2010, while his appeal was pending, Movant filed
16 a motion, under Federal Rule of Appellate Procedure 12.1,¹
17 requesting that this Court issue an indicative ruling, in light of
18 "new developments," that it is inclined to grant the § 2255 motion
19 or to certify that the motion raises a substantial issue. As "new
20 developments," Movant submitted a declaration from an individual
21 named George F. Loonie filed in Bhatia v. Wig, et al., CV 10-0072
22 SBA, a civil case before another judge of this Court. Not only
23

24 ¹ Federal Rule of Appellate Procedure 12.1 provides that, when
25 relief is sought from an order that the district court cannot
26 reconsider because it is the subject of a pending appeal, the
27 district court may issue an indicative ruling that it would grant
the motion or that the motion raises a substantial issue, in which
case the court of appeals has discretion to remand for further
proceedings.

1 does this declaration fail to raise a substantial issue in regard
2 to Movant's § 2255 motion, but the motion is moot because the Ninth
3 Circuit's mandate affirming this Court's order has already issued.

4 On February 15, 2011, after the Ninth Circuit issued its order
5 but before it issued its mandate, Movant filed a motion, under
6 Federal Rule of Civil Procedure 15 (c)(1)(B) and 15 (d),² to relate
7 back and amend or supplement his § 2255 motion with facts uncovered
8 in two civil cases and one criminal case before another judge of
9 this Court. Because the Ninth Circuit affirmed this Court's order
10 denying Movant's § 2255 motion and its mandate has issued, this
11 motion is moot and is denied.

12 Movant's four additional motions also are attempts to
13 relitigate issues which have been decided or which could have been
14 raised in his criminal case or in his § 2255 motion. Movant may
15 not continue to file motions to relitigate the issues adjudicated
16 in these cases; each has been appealed and the judgments of this
17 Court have been affirmed. See United States v. Allen, 157 F.3d
18 661, 644 (9th Cir. 1998) (before second or successive motion under
19 § 2255 may be filed in district court, it must be certified by a
20 panel of the appropriate court of appeals to contain "(1) newly
21 discovered evidence that, if proven and viewed in light of the
22 evidence as a whole, would be sufficient to establish by clear and
23 convincing evidence that no reasonable factfinder would have found

24
25 ²Rule 15 (c)(1)(B) allows an amendment to relate back to the
26 date of the original pleading when the amendment asserts a claim or
27 defense that arose out of the conduct or occurrence set out in the
28 original pleading. Rule 15 (d) allows a party to file a
supplemental pleading setting out a transaction or event that
happened after the date of the pleading to be supplemented.

1 the movant guilty of the offense;" or "(2) a new rule of
2 constitutional law, made retroactive to cases on collateral review
3 by the Supreme Court, that was previously unavailable").

4 Therefore, Movant's motions are denied. The Clerk of the
5 Court shall not file any further motions Movant submits in this
6 case, unless he obtains certification for a second § 2255 motion
7 from the court of appeals.

8
9 IT IS SO ORDERED.

10
11 Dated: 12/8/2011



CLAUDIA WILKEN
United States District Judge

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 USA et al,

5 Plaintiff,

6 v.

7 BHATIA et al,

8 Defendant.

Case Number: CR04-40071 CW

CERTIFICATE OF SERVICE

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court,
10 Northern District of California.

11 That on December 8, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located
14 in the Clerk's office.

15 Lal Bhatia
16 97562-011
17 Federal Detention Center - Dublin
18 5675 8th Street, Camp Parks
19 Dublin, CA 94568

20 Dated: December 8, 2011

21 Richard W. Wieking, Clerk
22 By: Nikki Riley, Deputy Clerk
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